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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/696,635	10/25/2000	Kestutis Tautvydas	11536-001001/55190USA8A	4398

7590

08/13/2002

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EXAMINER

JIANG, SHAOJIA A

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 08/13/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/696,635

Applicant(s)

TAUTVYDAS ET AL.

Examiner

Shaojia A. Jiang

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 31-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 11.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This Office Action is a response to Applicant's Request for Continued Examination (RCE) filed July 1, 2002 in Paper No. 13, and amendment filed July 1, 2002 in Paper No. 14 wherein claims 3-12, 17-22, and 24-30 are cancelled and claims 31-40 are newly submitted. Currently, claims 31-40 are pending in this application.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 31-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andrews et al. (5,460,833, of record in the previous Office Actions September 28, 2001 and March 26, 2002) in view of Viccaro et al. (5,188,822, PTO-892) and Carmody (5,145,685, PTO-892).

Andrews et al. discloses an antimicrobial composition comprising a fatty acid monoester such as glycerol monolaurate and propylene glycol monolaurate in amounts within the instant claim, an enhancer in amounts within the instant claim (e.g., a chelating agent, EDTA, or an organic acid such as lactic acid), anionic surfactants such as dodecylbenzene sulfonate salts and lauryl sulfate salts, and a vehicle such as water

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and ethanol. See abstract, col.2 lines 38-55, col.3 lines 1-8, col.4 lines 36-62, col.5 lines 4-13 and 20-39, and claims 1-9.

Andrews et al. do not expressly disclose the employment of benzoic acid or salicylic acid in their antimicrobial composition.

Viccaro et al. discloses that benzoic acid is a known antimicrobial compound and useful in the oral (dental) composition therein, having antimicrobial activity (see col.1 and col.25, claim 11).

Carmody discloses that salicylic acid is a known antimicrobial agent and useful in the skin composition therein, having antimicrobial activity (see abstract, col.10-11, claims 2 and 12).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ benzoic acid or salicylic acid in the antimicrobial composition of Andrews et al.

One having ordinary skill in the art at the time the invention was made would have been motivated to employ benzoic acid or salicylic acid in the antimicrobial composition of Andrews et al., since both benzoic acid and salicylic acid are known antimicrobial agents and also known to be useful in the antimicrobial compositions according to the prior art. Therefore, one of ordinary skill in the art would have reasonably expected that employing or adding benzoic acid or salicylic acid, known useful for the same purpose, i.e., antimicrobial, in the antimicrobial composition of Andrews et al. would improve the antimicrobial effect for the composition of Andrews et al.

Since all active composition components herein are known to useful in antimicrobial compositions, it is considered prima facie obvious to combine them into a single composition to form a third composition useful for the very same purpose. At least additive therapeutic effects would have been reasonably expected. See *In re Kerkhoven*, 205 USPQ 1069 (CCPA 1980).

Thus the claimed invention as a whole is clearly prima facie obvious over the combined teachings of the prior art.

In view of the rejections to the pending claims set forth above, no claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Jiang, whose telephone number is (703) 305-1008. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie, J.D., can be reached on (703) 308-4612. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1235.

S. A. Jiang, Ph.D.  
Patent Examiner, AU 1617  
August 5, 2002

RUSSELL TRAVERS  
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